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| 10/671,604 | 09/29/2003 | Richard D. Harding | 1632-12 | 8522 |
| 23117 | 7590 | 07/27/2004 | EXAMINER | |
| NIXON & VANDERHYE, PC 1100 N GLEBE ROAD 8TH FLOOR ARLINGTON, VA 22201-4714 | | | COZART, JERMIE E | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3726 | |

DATE MAILED: 07/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|-------------------------------|-------------------------------------|--|
| Office Action Summary | Application No. 10/671,604 | Applicant(s) HARDING, RICHARD D. | |
| | Examiner Jermie Cozart | Art Unit 3726 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-28, 31, 32 and 36-38 is/are rejected.
- 7) ☐ Claim(s) 29, 30, 33-35, 39 and 40 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>9/29/03</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Objections

1. Claim 18 is objected to because of the following informalities: In claim 18, line 2, the phrase "is heated" is grammatically incorrect. It is suggested to delete "is heated". Appropriate correction is required.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
3. Claims 2-5, 7-10, 13-16, 36, and 37 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
4. Claim 2 recites the limitation "it" in line 2 of the claim. There is insufficient antecedent basis for this limitation in the claim.
5. Regarding claims 3 and 13, the phrase "rubber-like tire" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "rubber-like tire"), thereby rendering the scope of the claim(s) unascertainable.
6. Claim 16 recites the limitation "the epoxy coating" in line 2 of the claim. There is insufficient antecedent basis for this limitation in the claim.
7. Claim 36 recites the limitation "the epoxy coating" in lines 1-2 of the claim. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1, 11, 22, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Foster et al. (5,151,147) in view of Qureshi et al. (4,621,399), and Applicant's Admitted Prior Art (AAPA).

Foster`147 discloses continuously coating and fabricating spiraled metal product, supplying a linear uncoated metal product to a coating unit (30) and applying a substantially uniform coating layer of a polymeric material onto the uncoated product to form a coated metal product, and thereafter bending the linear coated product into a spiraled metal product via bending (24, 25). *See column 2, lines 13-56, and figure 1 for further clarification.*

Foster, however, however, does not disclose a polymeric powder-coating unit, or the linear uncoated product being spiraled steel rebar.

Qureshi`399 discloses providing a polymeric powder-coating unit (36) in a coating system to apply a uniform coating onto a tube. *See column 4, line 23 – column 5, line 7, and Figure 1 for further clarification.*

AAPA discloses at page 1 and 2 of the specification, that it is conventional and well to apply a powder coating to spiraled steel rebar product, in order to protect against oxidation.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to provide the coating system of Foster with a polymeric powder-coating unit instead of a polymeric extruder and to provide the coating onto spiraled steel rebar product, in light of the teachings of Qureshi and AAPA, in order to provide a uniform coating of a polymeric material onto a tubular member, and to effectively coat spiraled steel product thereby preventing unwanted oxidation.

10. Claims 2 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Foster/Qureshi/AAPA as applied to claims 1 and 11 above, and further in view of Glomb et al. (4,918,958).

Foster/Qureshi/AAPA as modified above discloses all of the claimed subject matter except for the bending unit including a series of bending wheels comprised of separated upstream and downstream bending wheels and a central bending wheel which is disposed between and below the upstream and downstream bending wheels.

Glomb`958 discloses a bending unit including a series of bending wheels (3, 4, 5) comprised of separated upstream and downstream bending wheels (4, 5) and a central bending wheel (5) which is disposed between and below the upstream and downstream bending wheel. *See column 3, lines 16-45, and figure 2 for further clarification.*

Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to provide the bending unit of Foster/Qureshi/AAPA with a bending unit including a series of bending wheels comprised of separated upstream and downstream bending wheels and a central bending wheel which is disposed between and below the upstream and downstream bending wheels, in light of the teachings of Glomb et al., in

order to impart the proper amount of curvature thereby effectively coiling wires or tubular members.

11. Claims 3 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Foster/Qureshi/AAPA/Glomb as applied to claims 1, 2, 11, and 12 above, and further in view of Japanese Patent 363,168,229 (JP`229).

Foster/Qureshi/AAPA/Glomb discloses all of the claimed subject matter except for the bending wheels including a rubber-like tire mounted on a rigid rotatable wheel member.

JP`229 discloses a bending device which is provided with rubber rollers (21a, 21b, 31a, 31b) for applying pressure to tubular members.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to provide the bending unit of Foster/Qureshi/AAPA/Glomb with bending wheels including a rubber-like tire mounted on a rigid rotatable wheel member, in light of the teachings of JP`229, in order to effectively wind the tube member in a specific pitch diameter.

12. Claims 31, 32, 36, and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Foster et al. (5,151,147) in view of Simborg et al. (3,226,817), Applicant's Admitted Prior Art (AAPA), and Qureshi et al. (4,621,399).

Foster`147 discloses continuously coating and fabricating spiraled metal product, supplying a linear uncoated metal product to a coating unit (30) and applying a substantially uniform coating layer of a polymeric material onto the uncoated product to form a coated metal product, and thereafter bending the linear coated product into a

spiraled metal product via bending (24, 25). Foster discloses a heating unit (32) for heating the bar to an elevated temperature sufficient to fuse the polymer, and a curing unit (36) for curing the coating on the bar, wherein the curing unit comprises a quench cabinet (36) for subjecting the coated bar to a water quench. *See column 2, lines 13-56, and figure 1 for further clarification.*

Foster, however, does not disclose a rebar straightener for uncoiling uncoated rebar from a supply coil thereof and removing coil shape from the uncoiled and uncoated to provide linear uncoated rebar, a polymeric powder-coating unit, or the linear uncoated product being spiraled steel rebar.

Simborg discloses a coil stock material straightener (15) for uncoiling an uncoated stock material from a supply coil (10) thereof and removing coil shape from the uncoiled and uncoated stock material to provide linear uncoated stock material. *See column 2, lines 32-34, and figure for further clarification.*

AAPA discloses at page 1 and 2 of the specification, that it is conventional and well to apply a powder coating to spiraled steel rebar product, in order to protect against oxidation.

Qureshi`399 discloses providing a polymeric powder-coating unit (36) in a coating system to apply a uniform coating onto a tube. *See column 4, line 23 – column 5, line 7, and Figure 1 for further clarification.*

Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to provide the coating system of Foster with a coil stock material straightener, to provide the coating onto spiraled steel rebar product, and to provide a polymeric powder-coating unit instead of a polymeric extruder and, in light of the

respective teachings of Simborg, AAPA, and Qureshi, in order to effectively straighten the stock material, provide a uniform coating of a polymeric material onto a tubular member, and to effectively coat spiraled steel product thereby preventing unwanted oxidation.

Double Patenting

13. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

14. Claims 1-28, 31, 32, and 36-38 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-16, 22, and

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23 of U.S. Patent No. 6,691,414 B2. Although the conflicting claims are not identical, they are not patentably distinct from each other due to the following: claim 1 of the patent "anticipates" application claims 1-4 and 21-26; claim 2 of the patent "anticipates" application claims 5 and 27; claim 3 of the patent "anticipates" of the application claims 6 and 28; claim 4 of the patent "anticipates" application claim 7; claim 5 of the patent "anticipates" application claim 8; claim 6 of the patent "anticipates" application claim 9; claim 7 of the patent "anticipates" application claim 10; claim 8 of the patent "anticipates" application claims 11, 12, and 20; claim 9 of the patent "anticipates" application claim 13; claim 10 of the patent "anticipates" application claim 14; claim 11 of the patent "anticipates" application claim 15; claim 15 of the patent "anticipates" application claim 16; claim 12 of the patent "anticipates" application claim 17; claim 13 of the patent "anticipates" application claim 18; claim 14 of the patent "anticipates" application claim 9; claim 16 of the patent "anticipates" application claims 31 and 32; claim 22 of the patent "anticipates" application claims 36 and 37; claim 23 of the patent "anticipates" application claim 38. Accordingly, application the claims are not patentably distinct from patent claims. Thus it is apparent that the more specific patent claims encompasses application claims. Following the rationale in *In re Goodman* cited in the preceding paragraph, where applicant has once been granted a patent containing a claim for the specific or narrower invention, applicant may not then obtain a second patent with a claim for the generic or broader invention without first submitting an appropriate terminal disclaimer.


Allowable Subject Matter

15. Claims 29, 30, 33-35, 39, and 40 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jermie Cozart whose telephone number is 703-305-0126. The examiner can normally be reached on Monday-Thursday, 7:30 am - 6:00 pm. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

17. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jermie Cozart
Examiner
Art Unit 3726